IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12015 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHADBHAI MADHUBHAI SODHA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

MS PJ DAVAWALA, Addl. Central Govt. Standing Counsel for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 06/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention passed

against him by the District Magistrate, Ahmedabad, on 18.7.2003 in exercise of powers under sub-Section (2) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act) directing the detention of the petitioner and the petitioner came to be detained in pursuance of the said order on the same day.

2. The grounds served upon the petitioner and placed on record reveal that on 16.6.2003, Local Crime Branch Police intercepted three trucks, bearing No. GJ-8T-3903, GJ-13T-5990 and GJ-7T-7627. The Police found tankers and a truck loaded with solvent like liquid and, therefore, the District Supply Officer of Ahmedabad was called and informed about the material found in the truck and tankers, so the District Supply Officer of Ahmedabad took over the investigation. During the investigation and inquiry it was revealed before the District Supply Officer through the statements of the Drivers that one Dev Industry as situated at Sanand is dealing and manufacturing insolvent which were loaded in the trucks. One of the driver stated that he loaded his truck from the said Dev Industry from Sanand, and according to him, the goods were to be delivered to one Ajitbhai Panchamlal Jain at Ahmedabad near Ellisbridge. It was also revealed that the land and the installation standing on the land known as Dev Industry and previously known as Rishi Petrochem Pvt.Limited, belonged to one Rushabhai Gayaprasad Jain in the capacity of the Director of a private limited company. It was also revealed that thereafter said Rushabhai Gayaprasad Jain leased the installation of Dev Indstury to the present petitioner at the monthly rent of Rs. 50,000/-. It was also revealed that, in fact, Rushabhai Gayaprasad Jain and the present petitioner in conspiracy were manufacturing the solvent in the said Dev Industry in contravention to the Control Orders published in Essential Commodities Act, 1955. The detaining authority came to the conclusion that the solvent is easily soluble in petrol and diesel and the prices of the petrol and diesel are very high. It was concluded by the detaining authority that the intention of the petitioner and other two persons in conspiracy was to mix solvent with the petrol and thereby gain financially through blackmarketing. The detaining authority came to the conclusion that the said activities of the petitioner and other two persons could be prevented through detention law only and hence the impugned order.

3. Learned Advocate Mr. HR Prajapati for the

petitioner, learned AGP Ms.Mita Panchal, for the respondents No.1 to 3 and learned Additional Central Government Standing Counsel Ms. Davawala for respondent No.4 were heard at length. The affiavit-in-reply filed by the detaining authority as well as the Under Secretary, Department of Consumer Affairs, Food and Public Distribution, New Delhi, as placed on record, are also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the learned counsel for the respondents, it appears that the matter can be disposed of on the ground that whether the detaining authority took into consideration the vital aspect of the matter while passing the impugned order. On going through the grounds as placed on record, it is clear that a prosecution has been launched against the petitioner under Sections 3 and 7 of the Essential Commodities Act by the Local Crime Branch Police, Ahmedabad (Rural). According to the grounds served, the petitioner was in judicial custody when this order of detention came to be passed and served upon the petitioner. In this respect the detaining authority reached to the subjective satisfaction that on filing bail application, the petitioner was likely to be released on bail and was likely to continue his illegal activities. Learned Advocate for the petitioner makes a statement that in the said prosecution, the petitioner is still in judicial custody and has not been released on bail. On going through the record, it transpires that there was no material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. The facts of the case are squarely covered by a decision of the Apex Court in the matter of AMRUTLAL AND OTHER vs. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, as reported in AIR 2000 SC 3675. Therefore, the order impugned in this petition is required to be quashed and set aside only on the ground that the detaining authority did not take into consideration the vital aspect of the matter.

5. In the result, this Special Civil Application is allowed. The order impugned in this Special Civil Application passed on 18.7.2003 by the District Magistrate, Ahmedabad, under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. Vora, J.)

p.n.nair